

**SECOND AMENDMENT TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
IBI GROUP
FOR
TRANSPORTATION INCIDENT MANAGEMENT CENTER (TiMC) PROJECT**

This SECOND AMENDMENT to Agreement is made and entered into this ____ day of _____, 2013, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and IBI GROUP, a California Partnership (hereinafter "CONSULTANT").

R E C I T A L S

WHEREAS, on June 2, 2009, CITY and CONSULTANT entered into an agreement entitled "AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES BETWEEN THE CITY OF SAN JOSE AND IBI GROUP FOR TRANSPORTATION INCIDENT MANAGEMENT CENTER (TiMC) PROJECT", (hereinafter "AGREEMENT"); and

WHEREAS, on April 10, 2011, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to extend the term, with no increase in the amount of total compensation allowed; and

WHEREAS, CITY and CONSULTANT desire to amend the amended AGREEMENT to revise the Scope of Services, extend the term, and to increase the amount of total compensation allowed;

NOW, THEREFORE, THE PARTIES HEREBY AGREE TO AMEND THE AMENDED AGREEMENT AS FOLLOWS:

SECTION 1. SECTION 2, entitled "TERM OF AGREEMENT," is amended to read as follows:

"The term of this AGREEMENT shall be from June 2, 2009 through December 31, 2014, inclusive, subject to the provisions of Section 13 of this AGREEMENT. The DIRECTOR is authorized to extend the termination date for up to one hundred eighty (180) days so long as no other terms of this AGREEMENT are amended. No such extension is valid unless authorized in writing by the DIRECTOR, prior to the termination of the AGREEMENT. Any

such authorization shall be attached to, and become part of this AGREEMENT.”

SECTION 2. SECTION 4, entitled “COMPENSATION,” is amended to read as follows:

“The compensation paid to the CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed FOUR HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$485,000.00) the rate and schedule of payment is set out in REVISED EXHIBIT D, entitled “COMPENSATION”, which is attached hereto and incorporated herein.”

SECTION 3. SECTION 12, entitled “DISADVANTAGED BUSINESS ENTERPRISE (DBE),” from the original agreement is amended to read as follows:

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- D. CONSULTANT shall complete and submit a copy of “Local Agency Proposer DBE Information (Consultant Contract)” and “Local Agency Proposer UDBE Commitment (Consultant Contract)” forms to the City within three (3) calendar days of the Effective Date of this Agreement.
- E. Upon completion of the work outlined in REVISED EXHIBIT B, entitled “SCOPE OF SERVICES,” CONSULTANT shall complete and submit a “Final Report – Utilization of Disadvantaged Business Enterprise (DBE),

First-Tier Subcontractors” form that provides a summary of the DBE final utilization; including showing total dollars paid to each DBE subconsultant.”

SECTION 4. Part A of Section 1 of EXHIBIT B, entitled “GENERAL PROJECT DESCRIPTION”, is amended to read as shown below.

“The PROJECT is a CITY project involving the design and construction of the Transportation Incident Management Center (TiMC) which includes approximately three thousand four hundred (3,400) square feet of tenant improvements in a public parking structure. The structure includes all necessary roughed in utilities. The **DEPARTMENT OF TRANSPORTATION** (hereinafter “CLIENT”) will be the end user of the facility. The PROJECT Construction Budget as defined in Section 1.C.1. is **TWO MILLION, FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000.00)**. CONSULTANT shall provide engineering design services for the PROJECT as well as construction support services.”

SECTION 5. REVISED EXHIBIT C, entitled “SCHEDULE OF PERFORMANCE,” is amended to read as shown in the SECOND REVISED EXHIBIT C, attached and incorporated into this Second Amendment.

SECTION 6. EXHIBIT D, entitled “COMPENSATION,” is amended to read as shown in the REVISED EXHIBIT D, attached and incorporated into this Second Amendment.

SECTION 7. EXHIBIT D-1, entitled “CONSULTANT HOURLY RATES FOR ADDITIONAL SERVICES,” is amended to read as shown in the REVISED EXHIBIT D-1: “CONSULTANT HOURLY RATES,” attached and incorporated into this Second Amendment.

SECTION 8. EXHIBIT H, entitled “DISADVANTAGED BUSINESS ENTERPRISE (DBE),” is attached hereto and incorporated into this Second Amendment.

SECTION 9. All of the terms and conditions of the amended AGREEMENT not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a municipal corporation

By: _____
GLENN SCHWARZBACH
Senior Deputy City Attorney

By: _____
TONI J. TABER, CMC
Acting City Clerk

“CONSULTANT”

IBI Group, a California Partnership

By: _____
BARTHOLEMEW CIMA, P.E.
Director

By: _____
DAVID THOM
Managing Director

SECOND REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT shall complete all work by December 31, 2014.

The following sets forth the distribution of CONSULTANT's Schedule of Performance. The DIRECTOR may approve in writing the extension of the milestone dates set in this SECOND REVISED EXHIBIT. Dates are measured from the date of completion of the prior task.

Task 1.1	Pre-Design completed by:	8 weeks
Task 1.2	Scope Meeting completed by:	2 weeks
Task 1.3	Conceptual Design completed by:	5 weeks
Task 2:	Schematic Design completed by:	6 weeks
Task 3:	Design Development completed by:	6 weeks
Task 4:	Construction Documents completed by:	14 weeks
Task 5:	Bidding and Award completed by:	14 weeks
Task 6:	Construction Administration completed by:	39 weeks
Task 7:	Record Documents & Project Close-out completed by:	3 weeks
Task 8:	Additional Services (authorized only) completed by:	As determined

REVISED EXHIBIT D
COMPENSATION

A. Maximum Compensation:

CITY agrees to compensate CONSULTANT for professional services performed in accordance with the terms and conditions of this AGREEMENT. The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including payments for Basic Services, Additional Services, and Reimbursable Expenses, shall not exceed **FOUR HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$485,000.00)**. Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein, shall be at no cost to the CITY.

Basic Services shall be all services set forth in Section 1, and Section 2, Tasks 1 – 7 in REVISED EXHIBIT B of this AGREEMENT. CONSULTANT agrees that it shall perform all Basic Services, exclusive of Reimbursable Expenses pursuant to PARAGRAPH D and Additional Services pursuant to PARAGRAPH F of this REVISED EXHIBIT D, for the total amount of **FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00)**. The maximum amount of Reimbursable Expenses pursuant to PARAGRAPH D of this REVISED EXHIBIT D is **TWO THOUSAND DOLLARS (\$2,000.00)**, and the maximum amount for Additional Services authorized pursuant to PARAGRAPH F of this REVISED EXHIBIT D is **THIRTY THREE THOUSAND DOLLARS (\$33,000.00)**.

B. Method of Payment:

CONSULTANT shall, during the term of this AGREEMENT, invoice the CITY every month for services performed and reimbursable expenses incurred under this AGREEMENT during the previous month. Provided services covered by the invoice have been completed in accordance with the provisions of this AGREEMENT, as determined by the DIRECTOR, CITY shall pay CONSULTANT the amount shown on the invoice within thirty (30) days of the approved invoice.

The monthly invoice shall describe the topics and tasks completed during the invoice period in accordance with the Budget Schedule set forth below. The invoice shall list the percentage of work completed based on the lump sum contract amount for Tasks 1 through 5 inclusive. All services for Tasks 6 and 7, inclusive, shall be billed at the hourly rates indicated in the attached “REVISED EXHIBIT D-1: CONSULTANT HOURLY RATES” to a maximum of the Not-to-Exceed (N.T.E.) amounts indicated on the Budget Schedule below. Additional Services also shall be billed at the hourly rates indicated in the attached “REVISED EXHIBIT D-1: CONSULTANT HOURLY RATES” to the maximum of the N.T.E. amount indicated on the Budget Schedule below. The invoice shall also show the total to be paid for the invoice period. Schedules are as follows.

C. Budget Schedule:

The Budget Schedule for this AGREEMENT shall be as follows:

<u>Description</u>	<u>Compensation</u>
TASK 1.1: Pre-Design	\$30,000 (L.S.)
TASK 1.2: Scope Meeting	\$25,000 (L.S.)
TASK 1.3: Conceptual Design	\$35,000 (L.S.)
TASK 2: Schematic Design	\$45,000 (L.S.)
TASK 3: Design Development	\$50,000 (L.S.)
TASK 4: Construction Documents	\$95,000 (L.S.)
TASK 5: Bidding and Award	\$25,000 (L.S.)
TASK 6: Construction Administration	\$128,500 (N.T.E.)
TASK 7: Record Documents and Project Close-Out	\$16,500 (N.T.E.)
Total (L.S.) and Hourly (N.T.E) amount for basic services:	\$450,000
TASK 8: Additional Services (See PARAGRAPH F below)	\$ 33,000 (N.T.E.)
Reimbursable Expenses (See PARAGRAPH D below)	\$ 2,000 (N.T.E.)
TOTAL:	\$485,000

CONSULTANT shall not exceed any of the specified budget amounts for any TASK without prior written authorization from the DIRECTOR. The DIRECTOR may approve in writing the transfer of budget amounts between any of the TASKS listed above provided the total AGREEMENT amount does not exceed **FOUR HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$485,000.00)**. CONSULTANT shall invoice based on payment per TASKS against the sum total as shown above based on percentage of completion per TASK. Notwithstanding the foregoing, the CONSULTANT will be paid hourly for a total N.T.E. amount for Task 6. Task 7 shall be paid on an hourly basis, N.T.E. the total amount set forth in the Budget Schedule, above. CONSULTANT is directly responsible for any payment for subconsultant work on this PROJECT. All subconsultant work is included in the CONSULTANT's compensation.

D. Reimbursable Expenses:

Only express deliveries of deliverables requested and approved by the DIRECTOR and submitted to the CITY for charges of CONSULTANT and subconsultant work are reimbursable expenses under this AGREEMENT when produced for a CITY Submittal as identified in Sections A through D of this REVISED EXHIBIT D.

Reimbursable expenses are billed with back-up documentation, plus 15%. Any other expenses are included in CONSULTANT'S fee. Printing for public distribution will be the responsibility of the CITY. Any expenses related to CONSULTANT's internal plan checks, plotting tests, prints in letter or executive size copies, and fax copies are not reimbursable.

E. SUBCONSULTANT Services:

CONSULTANT is directly responsible for any payment for subconsultant work on this PROJECT.

F. Additional Services:

CONSULTANT shall not perform Additional Services without prior written authorization of the DIRECTOR. Additional Services shall be separately negotiated to be paid on a lump sum or a time and material basis at the rates set forth herein, as authorized by the CITY. CITY has set aside the maximum sum of **THIRTY THREE THOUSAND DOLLARS (\$33,000.00)** for the payment of Additional Services. The DIRECTOR shall not authorize and CONSULTANT shall not perform any Additional Services that result in charges in excess of the above maximum sum. CONSULTANT shall submit an invoice to the CITY for payment on a monthly basis for authorized Additional Services rendered during the previous month. The CONSULTANT will bill authorized Additional Services on a time and material basis and shall submit invoices in accordance with the CONSULTANT hourly rate schedule attached to this REVISED EXHIBIT D. Prior to the expiration of the rates shown in the attached schedule, CONSULTANT may provide a new hourly rate schedule with rates not to exceed 5% of the rate schedule attached to this REVISED EXHIBIT D. New rates are subject to approval by the DIRECTOR once the current schedule expires. The CITY shall pay Additional Services invoices as provided in this REVISED EXHIBIT D.

REVISED EXHIBIT D-1

CONSULTANT HOURLY RATES

Rates subject to change after December 31, 2014, subject to execution of a proper amendment to this AGREEMENT. The Professional Rate Schedule by Classification as shown below is effective as of July 1, 2013. As of the effective date of this Second Amendment to AGREEMENT no hourly charges for any services provided prior to July 1, 2013 are outstanding or authorized nor shall be paid by City [ED1].

<u>Position</u>	<u>Rate</u>
Director	\$ 250.00
Project Manager (PM)	\$ 192.00
Senior Architect	\$ 192.00
PM Mechanical Engineer	\$ 192.00
Sr. Engineer	\$ 192.00
HVAC Engineer	\$ 140.00
ME Engineer	\$ 140.00
Tech. Design ITS	\$ 140.00
Communications Engineer	\$ 140.00
Job Captain	\$ 123.00
Interior Designer	\$ 120.00
Engineer/Planner	\$ 115.00
CAD Operator	\$ 112.00
Jr. Electrical Engineer	\$ 80.00
Jr. Architect	\$ 80.00
Jr. ITS Engineer	\$ 80.00
Technician/CAD	\$ 75.00
Clerical	\$ 65.00

The above rates may include temporary personnel hired by IBI GROUP on a contractual as needed basis.

EXHIBIT H
DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Attached forms, entitled, “Local Assistance Procedures Manual EXHIBIT 10-O1”; and, “Local Agency Proposer UDBE Commitment (Consultant Contracts)”; and “Local Assistance Procedures Manual EXHIBIT 10-O2 Local Agency Proposer DBE Information (Consultant Contracts)” are to be completed by CONSULTANT and faxed, or scanned and e-mailed, to City within three (3) business days of the effective date of this Agreement.